

that such scheduling flexibility benefits fans and schools by maximizing exposure to important games. They contend that in most cases, the games that will be chosen by ABC and ESPN are readily predictable long before the game is formally selected. In some cases, however, they submit that it may not become apparent until late in the season that a particular game may determine a conference champion or may affect national ranking. Broadcasters will be asked to address this argument in subsequent rounds of this proceeding. They will also be asked to make specific recommendations regarding how much advance notice is optimal to enable a broadcaster to coordinate and promote its telecast of a particular game.

77. Finally, in order to meet the statutory directive "to determine whether and to what extent such preclusive contracts are prohibited by existing statutes," we will seek further information to enable us to apply the "rule of reason" test applied by the U.S. Department of Justice to ascertain compliance with the antitrust laws.<sup>172</sup> In particular, we will seek information concerning the appropriate definition of the relevant product and geographic markets, the degree of market power possessed by the college leagues, the degree of market power possessed by the programmers, and whether preclusive contracts permit the achievement of efficiencies that could not readily be achieved in another manner. Such information will enable us to determine whether preclusive contracts limit or increase the quantity of sports programming telecast.<sup>173</sup>

#### V. THE FUTURE OF SPORTS PROGRAMMING

78. As we pointed out in the Notice, the legislative history of the 1992 Cable Act suggests that we should, to the extent possible, "project future sports carriage trends."<sup>174</sup> We therefore sought comment on factors affecting the future of sports programming, including new technologies, retransmission consent and the antitrust exemption.<sup>175</sup>

79. In general, cable and sports entities contend that broadcast television will continue to play a primary role in the distribution of sports programming. For example, NFL notes that its Commissioner has committed to Congress that the Super Bowl will remain on broadcast television through at least the year 2000, that no playoff game will be moved from broadcast television without timely notice to Congress, and that any pay-per-view experimentation will initially be conducted on a limited basis and will be designed to supplement the games available on the broadcast and cable

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<sup>172</sup> See Notice at 1497-98.

<sup>173</sup> Id.

<sup>174</sup> Notice at 1492 (quoting House Report at 126).

<sup>175</sup> Notice at 1496.

networks.<sup>176</sup> Similarly, NBA submits that its Commissioner has assured Congress that broadcast television will remain the key method of distribution for NBA basketball, noting the promotional value of having events available to all television households.<sup>177</sup> Time Warner likewise predicts that the Super Bowl and World Series will remain on broadcast television as the result of their large mass audience appeal, as well as fan goodwill and political concerns, and that the current pattern of "broadcaster first" rights negotiations will continue, particularly at the national level.<sup>178</sup> Other commenters, however, are concerned that several, if not all, major sports events currently shown on broadcast television will eventually migrate to a subscription service.<sup>179</sup> For example, CBS notes that HBO has just announced its desire to purchase a package of five or six regular season NFL games, and submits that some industry analysts contemplate a pay-per-view future for the daytime MLB championship games.<sup>180</sup>

80. New technologies. Few commenters specifically discuss the impact of emerging technologies on the video distribution of sports programming. Viacom submits that distributors using new technologies are willing to take risks that other distributors will not. Viacom asserts that the emergence of new technologies will ultimately increase consumer choice by offering viewers access to events that may have an appeal too limited to warrant carriage on an advertiser-supported medium.<sup>181</sup> NFL and NBA contend that emerging technologies such as wireless cable and direct broadcast satellites have the potential to offer substantially more programming choices to consumers, but they reiterate their intention to continue to distribute games via broadcast television.<sup>182</sup> NAB submits that perhaps the greatest threat to broadcasters is posed by technological advances that will dramatically increase cable channel capacity which, in turn, could escalate the potential for pay-per-view telecasts.<sup>183</sup>

81. Retransmission consent. A number of commenters believe that retransmission consent revenues provided by virtue of Section 6 of the 1992 Cable Act may enable broadcasters to better negotiate with cable entities for

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<sup>176</sup> Id. at 22-23.

<sup>177</sup> NBA Comments at 17.

<sup>178</sup> Time Warner Comments at 40-47.

<sup>179</sup> See generally INTV Comments, INTV Reply, CBS Reply.

<sup>180</sup> CBS Reply at 11.

<sup>181</sup> Viacom Comments at 6-7.

<sup>182</sup> See, e.g., NFL Comments at 32-33; NBA Comments at 20.

<sup>183</sup> NAB Comments at 5.

the purchase of sports programming rights.<sup>184</sup> Section 6 permits broadcasters to elect retransmission consent or must-carry status in their local markets and, if they elect retransmission consent, to negotiate compensation for cable carriage.<sup>185</sup> Some commenters further submit that broadcasters' bargaining power is enhanced by the must-carry, programming access, rate regulation and ownership provisions of the 1992 Cable Act.<sup>186</sup> INTV, however, doubts that retransmission consent fees will significantly benefit broadcasters in the sports programming context. It contends that many of the stations seeking to acquire sports programming are independents, and are thus unlikely to obtain significant retransmission consent fees. INTV also argues that because there may be several broadcast stations in an area but only one cable operator, monopoly cable operators will be in a position to play one station against another to keep retransmission consent fees low.<sup>187</sup>

82. Antitrust exemption. We pointed out in the Notice that the Sports Broadcasting Act of 1961, 15 U.S.C. Sections 1291-95, exempts from the antitrust laws joint agreements among professional sports teams in the NFL, NBA, NHL and MLB that permit the leagues to sell telecasting rights on behalf of individual member teams. We noted that MLB also benefits from a separate, more general antitrust exemption. We sought comment on the extent to which sports distribution contracts would be different absent the antitrust exemption, and suggested that any regulation in this area might be directed at sports teams and leagues rather than the media to which they sell telecasting rights.<sup>188</sup> The few commenters addressing this issue assert that the Sports Broadcasting Act ensures widespread availability of professional sporting events to the viewing public by permitting leagues to offer coordinated television packages without legal obstacles. They also contend that shared revenues generated through television contracts have allowed for league expansion, which has lead to a greater number of games telecast. They accordingly do not recommend revision of the Act.<sup>189</sup>

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<sup>184</sup> See, e.g., CBS Comments at 13; NFA Comments at 28-29; MLB Comments at 9 n.4; NCTA Reply at 5-7; Rainbow Comments at 8-9.

<sup>185</sup> See 47 U.S.C. Section 325(b).

<sup>186</sup> See NCTA Reply at 5-7; Rainbow Comments at 8-9; Time Warner Comments at 40-46.

<sup>187</sup> INTV Reply at 5-6. While we cannot predict the effect that retransmission consent rights will have on the broadcasting of sports events, we note that some sports programming can be quite valuable and may enable a station to command considerable retransmission consent fees. Retransmission consent payments will be determined by the value of the programming and not by the network affiliation, or lack of affiliation, of the broadcast station.

<sup>188</sup> Notice at 1496 & n.28.

<sup>189</sup> See NBA Comments at 18-19; NFL Comments at 31-32; NHL Comments at 19; NHL Reply at 9; see also CapCities/ABC Comments at 6 (the antitrust exemption benefits broadcasters by enabling leagues to efficiently assemble

## VI. RECOMMENDATIONS AND CONCLUSIONS

83. The majority of commenters submit that the record of this proceeding does not warrant any legislative recommendations or regulatory action with respect to migration of sports programming.<sup>190</sup> Further, MLB contends that circumstances have not materially changed since the District of Columbia Court of Appeals invalidated the Commission's prior anti-siphoning rules in Home Box Office, Inc. v. FCC, 567 F.2d 9 (D.C. Cir. 1977), cert. denied, 434 U.S. 829.<sup>191</sup> CapCities/ABC and NBC, however, suggest that the Commission might wish to consider narrowly tailored government intervention if popular and widely available sports events such as the Super Bowl, the World Series, the Olympic Games and other championship and playoff games appear in danger of migrating to a subscription service, particularly a pay-per-view service.<sup>192</sup>

84. Conversely, INTV recommends that the Commission adopt sports siphoning rules. It contends that the size and penetration of the cable industry and the extent of sports migration have changed substantially since the previous rules were struck down in Home Box Office.<sup>193</sup> The New York City Department of Telecommunications and Energy does not recommend the adoption of regulations at this time, but urges the Commission to establish a Sports Programming Advisory Committee to analyze the causes and consequences of migration trends and to formulate recommendations. It suggests that the committee include government officials and representatives of the sports, broadcasting and cable industries.<sup>194</sup> NFL and NHL submit, however, that establishment of such a committee is unnecessary.<sup>195</sup>

85. As we stated at the outset of this Interim Report, we believe that it would be premature for us to make specific recommendations at this time. We will, however, offer our tentative findings based on the record currently before us. There is no question that the number of sports events shown on cable television has increased since 1980. It does not appear, however, that--

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packages of games that will be attractive to viewers and can be marketed effectively to advertisers).

<sup>190</sup> See, e.g., Daniel Scott Dunham Comments at 4; NFL Comments at 2-4; MLB Comments at 11-13, 19; Rainbow Comments at 21-23; Time Warner Comments at 38-39; Tribune Comments at 8.

<sup>191</sup> MLB Reply at 11-13.

<sup>192</sup> See CapCities/ABC Comments at 5-6; NBC Comments at 3-6.

<sup>193</sup> INTV Comments at 28-32.

<sup>194</sup> NYC Comments at 2, 7.

<sup>195</sup> NFL Comments at 5-6; NHL Reply at 9.

this increased cable exposure has led to a concomitant decrease in the number of sporting events shown on broadcast television; to the contrary, broadcast exposure has increased in some cases. The Commission has long been concerned that widely popular sports events remain available to the public via free, over-the-air television. Although the record does not at this time reveal a migratory trend towards cable, either overall or in individual sports, we note that we will explore these issues in greater detail in our Final Report. If we believe that the availability of sporting events to the public is in jeopardy, we will not hesitate to suggest corrective legislation or to take appropriate regulatory action.

86. Regarding the six sports that are the subject of our inquiry, the record shows that NFL and college basketball games have not migrated to cable television and are in little danger of doing so. With respect to college football, we do not believe that games previously available to broadcast television have moved to cable television, but we will make further inquiries regarding preclusive contracts between college football conferences and video programming vendors, including broadcasters. Similarly, it appears that migration of NBA, MLB and NHL games has not taken place at the national level, and, while some NBA, MLB and NHL games have moved to cable in some local markets, it appears that local migration has been isolated and relatively slight. The Commission will nonetheless closely monitor migration trends at the local level for basketball, baseball and hockey before issuing its Final Report. We observe that the market factors with respect to professional hockey programming may differ relative to professional football, basketball or baseball due to considerably fewer national viewing choices over the relevant time period. Thus, most viewing choices are limited to local programming for regular season and most playoff games and the local rating numbers are conceivably based on unique market dynamics. As a result, the general findings regarding migration for professional hockey could differ from our findings regarding other sports. We invite commenters to discuss these initial impressions upon release of our Further Notice of Inquiry in this proceeding.

## VII. DATA COLLECTION FOR FINAL REPORT

87. Pursuant to Section 26 of the statute, the Commission must issue a Final Report on this subject on or before July 1, 1994. In anticipation of our Final Report, we intend to issue a Further Notice of Inquiry in late 1993 or early 1994 in order to permit commenters to update the information already submitted. In addition, while the record of this proceeding reflects a great deal of information regarding distribution of sports programming, a few areas warrant further comment. For example, trade reports indicate that the broadcasting arrangement MLB has negotiated with ABC and NBC for next season will change the way regular season games are telecast, and will revise the MLB playoff schedule.<sup>196</sup> NHL has likewise announced a reconfiguration of its league structure and playoff schedule, and NBA has negotiated a revised broadcasting arrangement with NBC. There is also some question as to ESPN's

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<sup>196</sup> See note 83, supra.

future involvement in the telecasting of professional baseball. We intend to seek further comment on these arrangements as they are finalized. Further, as discussed in Section IV, supra, we need more information regarding exclusive contracts, particularly college football contracts, in order to fully evaluate whether these arrangements are preclusive with respect to local broadcasters. Additional data regarding local telecasts of college football and basketball would also be useful, as noted in Section III-F, supra, as would information regarding the cost of subscribing to the various cable services mentioned in the record. While we do not request specific comment in response to this Interim Report, we raise these issues to prepare commenters to more fully address them, along with other issues, in connection with our forthcoming Further Notice of Inquiry.

#### VIII. ADMINISTRATIVE MATTERS

88. This Interim Report is issued pursuant to authority contained in Section 26 of the Cable Television and Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992), and Sections 4(i) and 403 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 403.

89. For further information concerning this proceeding, contact Jane Hinckley Halprin ((202) 632-7792) or Scott Roberts ((202) 632-6302), Policy and Rules Division, Mass Media Bureau.

#### IX. ORDERING CLAUSE

90. IT IS ORDERED that the Secretary shall send copies of this Interim Report to the appropriate committees and subcommittees of the United States House of Representatives and the United States Senate.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton  
Acting Secretary

APPENDIX A  
Section 26 of 1992 Cable Act

SEC. 26. SPORTS PROGRAMMING MIGRATION STUDY AND REPORT.

(a) Study Required.—The Federal Communications Commission shall conduct an ongoing study on the carriage of local, regional, and national sports programming by broadcast stations, cable programming networks, and pay-per-view services. The study shall investigate and analyze, on a sport-by-sport basis, trends in the migration of such programming from carriage by broadcast stations to carriage over cable programming networks and pay-per-view systems, including the economic causes and the economic and social consequences of such trends.

(b) Report on Study.—The Federal Communications Commission shall, on or before July 1, 1993, and July 1, 1994, submit an interim and a final report, respectively, on the results of the study required by subsection (a) to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate. Such reports shall include a statement of the results, on a sport-by-sport basis, of the analysis of the trends required by subsection (a) and such legislative or regulatory recommendations as the Commission considers appropriate.

(c) Analysis of Preclusive Contracts Required.—

(1) Analysis required.—In conducting the study required by subsection (a), the Commission shall analyze the extent to which preclusive contracts between college athletic conferences and video programming vendors have artificially and unfairly restricted the supply of the sporting events of local colleges for broadcast on local television stations. In conducting such analysis, the Commission shall consult with the Attorney General to determine whether and to what extent such preclusive contracts are prohibited by existing statutes. The reports required by subsection (b) shall include separate statements of the results of the analysis required by this subsection, together with such recommendations for legislation as the Commission considers necessary and appropriate.

(2) Definition.—For purposes of this subsection, the term "preclusive contract" includes any contract that prohibits—

(A) the live broadcast by a local television station of a sporting event of a local college team that is not carried, on a live basis, by any cable system within the local community served by such local television station; or

(B) the delayed broadcast by a local television station of a sporting event of a local college team that is not carried, on a live or delayed basis, by any cable system within the local community served by such local television station.

APPENDIX B  
List of Commenters

Initial Comments

1. Affiliated Regional Communications, Ltd.
2. Association of Independent Television Stations, Inc.
3. Atlantic Coast Conference
4. Big East Conference/Big East Football Conference
5. Capital Cities/ABC, Inc.
6. Nicholas P. Cessario
7. College Football Association
8. Colonial Athletic Association
9. Colorado Athletic Conference
10. Colorado State University
11. John M. Corothers
12. Daniel Scott Dunham
13. ESPN, Inc.
14. Madison Square Garden Corp.
15. National Association of Broadcasters
16. National Basketball Association
17. National Broadcasting Co., Inc.
18. National Cable Television Association, Inc.
19. National Collegiate Athletic Association
20. National Football League
21. National Hockey League
22. New York City Department of Telecommunications and Energy
23. Office of the Commissioner of Baseball
24. Pacific 10 Conference
25. Rainbow Programming Holdings, Inc.
26. Southland Conference
27. Southwest Conference
28. Texas Special Olympics
29. Time Warner Entertainment Co., L.P.
30. Tribune Broadcasting Co.
31. Turner Broadcasting System, Inc.
32. United Video, Inc.
33. University of Denver
34. University Interscholastic League
35. Viacom International, Inc.
36. Wireless Cable Association International, Inc.
37. Andrew Zimbalist



#### Reply Comments

1. Affiliated Regional Communications, Inc.
2. Association of Independent Television Stations
3. Brigham Young University
4. Capital Cities/ABC, Inc.
5. CBS, Inc.
6. College Football Association
7. East Carolina University
8. Madison Square Garden Corporation
9. National Cable Television Association, Inc.
10. National Football League
11. National Hockey League
12. Office of the Commissioner of Baseball
13. Pappas Telecasting Companies
14. Time Warner Entertainment Company, L.P.
15. Tribune Broadcasting Company
16. University of Alabama
17. University of Arkansas
18. University of Pittsburgh

#### Additional or Supplemental Comments

1. Capital Cities/ABC
2. College Football Association (2 filings)
3. Dennis L. Donna
4. Mr. and Mrs. Dean Gamble
5. Donald J. Mueller
6. National Basketball Association (2 filings)
7. National Hockey League
8. Office of the Commissioner of Baseball (2 filings)
9. Tribune Broadcasting Company

APPENDIX C  
Charts

Chart 1: Subscribership of National Cable Networks and Superstations

| <u>Network/Superstation</u> | <u>Number of<br/>Subscribers 1992</u> | <u>Number of<br/>Subscribers 1985</u> |
|-----------------------------|---------------------------------------|---------------------------------------|
| ESPN                        | 60 million                            | 37 million                            |
| USA                         | 60 million                            | 31 million                            |
| TBS                         | 59 million                            | 35 million                            |
| TNT                         | 56 million                            | (began 10/88)                         |
| WGN                         | 38 million                            | 17 million                            |
| BET                         | 34 million                            | 12 million                            |
| SportsChannel America       | 18 million                            | (began 1/89)                          |
| WWOR                        | 13.5 million                          | 5.6 million                           |
| WPIX                        | 9.5 million                           | 2.0 million                           |
| KTLA                        | 5.2 million                           | (began 3/88)                          |
| KTVT                        | 2.3 million                           | 1.6 million                           |
| WSBK                        | 0.6 million                           | (began 2/88)                          |

Sources: 1992 data: National Cable Television Association, Cable Television Developments, October 1992, pp. 1-C to 33-C. 1985 data: Broadcasting Cable Yearbook 1987, p. E-10.

Chart 2: Number of NFL Games Telecast and Their Ratings for All Regular Season Games on CBS, ABC, NBC, ESPN and TNT Networks

| Season | Games on CBS 1/<br>Telecast Rating |      | Games on ABC 2/<br>Telecast Rating |      | Games on NBC 3/<br>Telecast Rating |      | Games on ESPN 4/<br>Telecast Rating |      | Games on TNT 5/<br>Telecast Rating |     |
|--------|------------------------------------|------|------------------------------------|------|------------------------------------|------|-------------------------------------|------|------------------------------------|-----|
| 1980   | 27                                 | 15.3 | 20                                 | 20.3 | 30                                 | 14.7 | -                                   | -    | -                                  | -   |
| 1981   | 27                                 | 17.5 | 20                                 | 21.2 | 32                                 | 13.8 | -                                   | -    | -                                  | -   |
| 1982   | 17 6/                              | 16.5 | 12                                 | 19.3 | 16                                 | 13.9 | -                                   | -    | -                                  | -   |
| 1983   | 27                                 | 16.7 | 12                                 | 17.4 | 27                                 | 12.5 | -                                   | -    | -                                  | -   |
| 1984   | 27                                 | 14.3 | 21                                 | 16.1 | 27                                 | 12.1 | -                                   | -    | -                                  | -   |
| 1985   | 27                                 | 15.8 | 21                                 | 18.5 | 27                                 | 12.7 | -                                   | -    | -                                  | -   |
| 1986   | 27                                 | 15.2 | 21                                 | 17.6 | 27                                 | 12.4 | -                                   | -    | -                                  | -   |
| 1987   | 26                                 | 13.9 | 12                                 | 18.6 | 25                                 | 11.2 | 8                                   | 10.6 | -                                  | -   |
| 1988   | 27                                 | 13.8 | 16                                 | 16.9 | 27                                 | 11.7 | 8                                   | 9.3  | -                                  | -   |
| 1989   | 27                                 | 13.8 | 16                                 | 18.1 | 27                                 | 11.1 | 8                                   | 10.2 | -                                  | -   |
| 1990   | 30                                 | 13.5 | 17                                 | 16.7 | 29                                 | 11.0 | 8                                   | 9.8  | 8                                  | 7.0 |
| 1991   | 28                                 | 13.1 | 17                                 | 16.8 | 29                                 | 10.7 | 9                                   | 8.4  | 9                                  | 6.4 |
| 1992   | 30                                 | 13.0 | 17                                 | 16.8 | 29                                 | 11.2 | 9                                   | 8.4  | 9                                  | 6.9 |

1/ CBS reply comments, Appendix A.

2/ Cap Cities/ABC comments, Exhibit A.

3/ NBC comments, Exhibit A.

4/ ESPN comments p. 3.

Chart 3: Number of NFL Playoff Games Telecast and Their Average Ratings  
On CBS, ABC, and NBC

| <u>Season</u> | <u>Games on CBS 1/<br/>Telecast Rating</u> |      | <u>Games on ABC 2/<br/>Telecast Rating</u> |      | <u>Games on NBC 3/<br/>Telecast Rating</u> |      |
|---------------|--|------|--|------|--|------|
| 1980          | 4  | 30.5 | -  | -    | 4  | 27.4 |
| 1981          | 4  | 32.1 | -  | -    | 4  | 28.8 |
| 1982          | 5  | 26.0 | -  | -    | (no data)                                  |      |
| 1983          | 4  | 26.1 | -  | -    | 4  | 21.0 |
| 1984          | 4  | 25.2 | -  | -    | 4  | 21.8 |
| 1985          | 4  | 27.1 | -  | -    | 4  | 23.8 |
| 1986          | 4  | 24.1 | -  | -    | 4  | 22.8 |
| 1987          | 4  | 24.9 | -  | -    | 4  | 23.9 |
| 1988          | 4  | 23.7 | -  | -    | 4  | 20.9 |
| 1989          | 4  | 21.4 | -  | -    | 4  | 22.1 |
| 1990          | 4  | 24.2 | 2  | 18.5 | 4  | 20.9 |
| 1991          | 4  | 25.1 | 2  | 19.2 | 4  | 23.0 |
| 1992          | 4  | 25.9 | 2  | 18.3 | 4  | 21.9 |

Includes wildcard, playoffs and Conference Championship games but not Super Bowls.

1/ CBS reply comments, Appendix A.

2/ Cap Cities/ABC comments, Exhibit A.

3/ NBC comments, Exhibit A.

Chart 4: Regular Season National NBA Telecasts (Broadcast and Cable)

| <u>Season</u> | <u>No. of National TV<br/>Broadcasts 1/ Rating</u> |     | <u>No. of Nat'l Cable<br/>Telecasts 2/ Rating</u> |        |
|---------------|--|-----|---|--------|
| 1980-1981     | 14   | 6.2 | 40  | na     |
| 1981-1982     | 19   | 6.0 | 40  | na     |
| 1982-1983     | 7  | 6.7 | 80  | na     |
| 1983-1984     | 9  | 6.3 | 80  | 2.0    |
| 1984-1985     | 11   | 6.4 | 55  | 2.0 3/ |
| 1985-1986     | 12   | 7.1 | 55  | 2.2 3/ |
| 1986-1987     | 15   | 6.7 | 55  | 2.2    |
| 1987-1988     | 16   | 5.7 | 50  | 2.8    |
| 1988-1989     | 16   | 5.8 | 55  | 2.3    |
| 1989-1990     | 16   | 5.2 | 51  | 1.9    |
| 1990-1991     | 22   | 4.7 | 51  | 1.8    |
| 1991-1992     | 24   | 4.8 | 51  | 1.8    |
| 1992-1993     | 14 4/  | 5.6 | 39 5/   | 1.7    |

1/ Includes All-Star game.

2/ Does not include games that were authorized for local broadcast and were retransmitted for national distribution on superstations. Also, does not include telecasts of All-Star weekend special events.

3/ One game not included in average due to lost transmission.

4/ Through March 14, 1993. NBC is scheduled to broadcast a total of 25 regular season games.

5/ Through March 14, 1993. TNT is scheduled to telecast a total of 51 regular season games.

Note: CBS broadcast the games from 1980-81 to 1989-90; NBC thereafter. On cable, the USA Network telecast the games from 1980-81 to 1981-82; ESPN/USA from 1982-83 to 1983-84; TBS from 1984-85 to 1988-89; TNT thereafter.

NBA comments, Exhibits 3 and 4.

Chart 5: Post-Season National NBA Telecasts (Broadcast and Cable)

| <u>Season</u> | <u>No. of National TV<br/>Broadcasts</u> | <u>Rating</u> | <u>No. of Nat'l Cable<br/>Telecasts*</u> | <u>Rating</u> |
|---------------|--|---------------|--|---------------|
| 1980-1981     | 26                                       | 6.6           | 10                                       | na            |
| 1981-1982     | 21                                       | 8.2           | 10                                       | na            |
| 1982-1983     | 19                                       | 7.9           | 20                                       | na            |
| 1983-1984     | 23                                       | 7.4           | 24                                       | 2.8           |
| 1984-1985     | 21                                       | 7.8           | 21                                       | 2.9           |
| 1985-1986     | 21                                       | 8.7           | 20                                       | 3.8           |
| 1986-1987     | 22                                       | 9.5           | 24                                       | 3.7           |
| 1987-1988     | 26                                       | 9.4           | 31                                       | 4.4           |
| 1988-1989     | 20                                       | 8.7           | 26                                       | 4.2           |
| 1989-1990     | 26                                       | 8.3           | 30                                       | 3.6           |
| 1990-1991     | 24                                       | 8.6           | 34                                       | 3.3           |
| 1991-1992     | 28                                       | 8.7           | 37                                       | 3.0           |
| 1992-1993     | na                                       | na            | na                                       | na            |

\* Does not include games that were authorized for local broadcast and were retransmitted for national distribution on superstations.

Note: CBS broadcast the games from 1980-81 to 1989-90; NBC thereafter. On cable, the USA Network telecast the games from 1980-81 to 1981-82; ESPN/USA from 1982-83 to 1983-84; TBS from 1984-85 to 1988-89; TNT thereafter.

NBA comments, Exhibits 3 and 4.

Chart 6: Local/Regional NBA Telecasts (Broadcast and Cable)

| Season      | <-----Regular Season-----> |                      | <-----Post-Season----->  |                      |
|-------------|----------------------------|----------------------|--------------------------|----------------------|
|             | Local/Reg'l<br>Broadcast** | Local/Reg'l<br>Cable | Local/Reg'l<br>Broadcast | Local/Reg'l<br>Cable |
| 1981-1982   | 494                        | 329                  | na                       | na                   |
| 1982-1983   | 465                        | 570                  | 21                       | 14                   |
| 1983-1984** | 486                        | 502                  | 60                       | 31                   |
| 1984-1985   | 461                        | 629                  | 46                       | 24                   |
| 1985-1986   | 523                        | 543                  | 44                       | 28                   |
| 1986-1987   | 563                        | 520                  | 59                       | 22                   |
| 1987-1988   | 582                        | 577                  | 46                       | 38                   |
| 1988-1989   | 710                        | 634                  | 44                       | 29                   |
| 1989-1990   | 716                        | 779                  | 45                       | 39                   |
| 1990-1991   | 709                        | 914                  | 52                       | 27                   |
| 1991-1992   | 700                        | 910                  | 47                       | 42                   |
| 1992-1993   | 736                        | 922                  | —                        | —                    |

\* For this chart, superstation games have only been accounted for as broadcasts in the local market of the team carried by that superstation.

\*\* First year of expanded playoff format.

NBA comments, Exhibits 1 and 2.

Chart 7: National Major League Baseball Television Broadcasts (1980-1992)

| <u>Season</u> | <u>No. of Regular<br/>Season Games</u> | <u>Average Rating<br/>Per Regular Game</u> | <u>No. of Post-<br/>Season Games</u> | <u>Average Rating/<br/>Post-Season Game</u> |
|---------------|--|--|--------------------------------------|---|
| 1980          | 52                                     | 8.0  | 14                                   | 25.5  |
| 1981          | 38                                     | 6.7  | 14                                   | 21.4  |
| 1982          | 63                                     | 8.7  | 16                                   | 22.2  |
| 1983          | 63                                     | 7.9  | 13                                   | 17.8  |
| 1984          | 52                                     | 7.3  | 13                                   | 18.6  |
| 1985          | 51                                     | 7.4  | 20                                   | 19.0  |
| 1986          | 68                                     | 6.0  | 20                                   | 20.2  |
| 1987          | 48                                     | 7.2  | 19                                   | 18.1  |
| 1988          | 48                                     | 6.4  | 16                                   | 17.2  |
| 1989          | 46                                     | 5.6  | 14                                   | 14.3  |
| 1990          | 16                                     | 4.7  | 14                                   | 14.2  |
| 1991          | 16                                     | 4.0  | 19                                   | 16.3  |
| 1992          | 16                                     | 3.4  | 19                                   | 13.6  |

NOTE: From 1980 to 1990, ABC and NBC broadcast national games; CBS thereafter.

ABC comments, Exhibit A; NBC comments, Exhibit C and CBS reply comments, Appendix A.



Chart 8: Locally Televised Regular Season Baseball Games (1982 - 1992)

| <u>Year</u> | <u>Broadcast</u> | <u>Cable</u> | <u>Total Games<br/>Televised</u> |
|-------------|------------------|--------------|----------------------------------|
| 1982        | 1,554            | 400 est.     | 1,954                            |
| 1983        | 1,558            | 659          | 2,217                            |
| 1984        | 1,485            | 1,138        | 2,623                            |
| 1985        | 1,536            | 820          | 2,356                            |
| 1986        | 1,578            | 895          | 2,473                            |
| 1987        | 1,597            | 971          | 2,568                            |
| 1988        | 1,647            | 1,014        | 2,661                            |
| 1989        | 1,653            | 1,061        | 2,714                            |
| 1990        | 1,639            | 1,210        | 2,849                            |
| 1991        | 1,669            | 1,248        | 2,917                            |
| 1992        | 1,654            | 1,268        | 2,922                            |

Commissioner of Baseball addendum filed March 30, 1993

Chart 9: NHL National Cable Telecasts

| <u>Season</u> | <u>Network</u> | <u>Reg. Season</u> | <u>Playoffs</u> | <u>All-Star Game</u> |
|---------------|----------------|--------------------|-----------------|----------------------|
| 1980-81       | na             | na                 | na              | na                   |
| 1981-82       | na             | na                 | na              | na                   |
| 1982-83       | na             | na                 | na              | na                   |
| 1983-84       | USA            | 33                 | 22              | 1                    |
| 1984-85       | USA            | 33                 | 25              | 1                    |
| 1985-86       | ESPN           | 33                 | 34              | 1                    |
| 1986-87       | ESPN           | 34                 | 37              | 0                    |
| 1987-88       | ESPN           | 34                 | 35              | 0                    |
| 1988-89       | SPTS. CH.      | 150*               | na              | 0                    |
| 1989-90       | SPTS. CH.      | 150                | na              | 0**                  |
| 1990-91       | SPTS. CH.      | 150                | na              | 0                    |
| 1991-92       | SPTS. CH.      | 150                | na              | 0                    |
| 1992-93       | ESPN           | 25-27              | Undetermined    | 0                    |

\* From the 1988-89 season through the 1991-92 season, SportsChannel America (SPTS. CH.) made available on satellite approximately 150 games. During this time all cable systems within a team's market were instructed to transmit up to 50 of these games during the regular season. - Cable systems in non-NHL markets were instructed to transmit as many 75 of these games during the regular season. SportsChannel America was also granted the rights to telecast every Stanley Cup playoff game during these seasons.

\*\* Beginning in 1990, the All-Star game was carried on NBC.

NHL comments, Attachment 1.

Chart 10: NHL Regular Season Over-the-Air Broadcasts

| <u>Season</u> | <u>Home</u> | <u>Away</u> | <u>Total</u> |
|---------------|-------------|-------------|--------------|
| 1981-82       | 48          | 276         | 324          |
| 1992-93       | 39          | 240         | 279          |

NHL reply comments, Appendix.A.

Chart 11: National/Regional College Football Games and Ratings on Broadcast TV

| <u>Season</u> | <u>No. of Regular<br/>Season Games</u> | <u>Average Rating<br/>Per Regular Game</u> | <u>No. of Post-<br/>Season Games</u> | <u>Average Rating/<br/>Post-Season Game</u> |
|---------------|--|--|--------------------------------------|---|
| 1980-1981     | 54                                     | 11.5                                       | 6                                    | 20.9  |
| 1981-1982     | 64                                     | 12.0                                       | 6                                    | 15.2  |
| 1982-1983     | 50                                     | 10.8                                       | 5                                    | 16.6  |
| 1983-1984     | 50                                     | 9.8  | 6                                    | 13.5  |
| 1984-1985     | 34                                     | 7.4  | 6                                    | 13.1  |
| 1985-1986     | 37                                     | 7.0  | 6                                    | 15.6  |
| 1986-1987     | 38                                     | 6.9  | 7                                    | 12.7  |
| 1987-1988     | 37                                     | 5.1  | 8                                    | 10.0  |
| 1988-1989     | 40                                     | 6.2  | 9                                    | 8.6   |
| 1989-1990     | 41                                     | 5.9  | 10                                   | 8.3   |
| 1990-1991     | 42                                     | 5.5  | 9                                    | 7.8   |
| 1991-1992     | 61                                     | 6.5  | 9                                    | 7.7   |
| 1992-1993     | 67                                     | 6.2  | 9                                    | 8.7   |

Data for 1980-82 regular season is ABC data only. Regular season data for 1982-91 is ABC data and CBS data combined. Regular season data for 1991-93 is ABC data and NBC data combined. All post-season data is ABC data and NBC data combined.

Cap Cities/ABC notes that the "number of games" figures reflect all games broadcast. Because ABC often provides regional coverage of these games, there typically are several games broadcast in the same "window" or time period. Similarly, the ratings reflect the average ratings for all games in all time periods in which the games appear.

Cap Cities/ABC Comments, Exhibit A; CBS reply comments, Appendix A; NBC comments, Exhibit D.

Chart 12: National Broadcast and Cable Network Coverage of College Football Games  
(1987-1992)

| <u>Year</u>                            | <u>No. of Games<br/>Broadcast (Nat'l)</u> | <u>No. of Games on<br/>Cable</u> |
|--|---|----------------------------------|
| 1987                                   | 27  | 54                               |
| 1988                                   | 30  | 61                               |
| 1989                                   | 29  | 98                               |
| 1990                                   | 42  | 196                              |
| 1991                                   | 61  | 194                              |
| 1992                                   | 67  | 192                              |
| Percent increase<br>from 1987 to 1992: | 148%                                      | 256%                             |

Broadcast: ABC, CBS, NBC

Cable: ESPN, SportsChannel America, BET, TBS, FNN-Score (no longer operational), Prime Network, USA Network.

NCTA comments, Chart 4 citing Paul Kagan Associates, Inc., Media Sports Business, August 26, 1987, p. 2 and January 21, 1993, p. 8.

Warner asserts that broadcasters may make a determination that it is uneconomical to televise certain sports because of audience size, demographics, rights fees, production costs, or other factors.<sup>39</sup> INTV submits, however, that if broadcasters have not bid as high for certain events as cable operators, it is because cable channels have distinct advantages in negotiation, including a dual revenue stream, the support of a parent MSO and regional or national reach.<sup>40</sup> CBS similarly asserts that cable has the advantage of a dual revenue stream, that cable offers abundant alternatives to broadcast coverage thus diminishing the size of broadcast sports audiences, and that cable offers more advertising availabilities in sports programming.<sup>41</sup> Pappas also disagrees that broadcasters are not interested in sports programming, and argues that cable simply outbids broadcast television for sports events.<sup>42</sup>

16. NCTA, on the other hand, submits that although cable has two revenue streams, local broadcast stations have free, government granted spectrum that gives them 100 percent market penetration.<sup>43</sup> Similarly, Rainbow asserts that while owners are hesitant to broadcast home games over the air due to concerns about lost gate receipts, owners generally prefer to sell the rights to away games to broadcast stations because broadcast signals are available to the entire viewing audience. Rainbow also contends that franchise fees and other costs imposed on cable operators constrain their ability to pay programmers, and argues that broadcast advertising revenues frequently exceed the combined revenue streams available to cable.<sup>44</sup> Some commenters also contend that the emergence of the Fox Network among independent stations has resulted in realignment of sports programming in several markets because these stations are reluctant to preempt prime time programming for sports events.<sup>45</sup> Pappas disagrees, arguing that if a Fox affiliate chose to carry less sports programming, then other independents in the same market would pick up the events the Fox station dropped.<sup>46</sup> In addition, Time Warner contends that the programming strategies of rights holders are influenced by internal factors such as organizational, labor and scheduling issues, as well as external factors such as viewer interest,

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<sup>39</sup> Time Warner Comments at 10-11.

<sup>40</sup> INTV Reply at 2-5.

<sup>41</sup> CBS Reply at 8-10.

<sup>42</sup> Pappas Reply at 7-8.

<sup>43</sup> NCTA Reply at 5.

<sup>44</sup> Rainbow Comments at 5-7; 18-20.

<sup>45</sup> See, e.g., ARC Reply at 20 n.6; MLB Comments at 8; Rainbow Comments at 17-18; Turner Comments at 14.

<sup>46</sup> Pappas Reply at 7.

demographics and broadcasters' limited number of programming slots.<sup>47</sup>

17. Consequences. Parties who believe that significant sports migration has occurred contend that the consequences have been extremely detrimental to broadcast television stations. They argue that local stations, many of which are already in precarious financial condition, will not be able to outbid cable for sports events and will not be able to afford to provide other quality programming due to loss of sports revenues.<sup>48</sup> Commenters also assert that sports migration has had adverse consequences for sports fans. For example, CBS contends that basic cable service costs \$25 or more and notes that in 1992, five baseball teams offered pay-per-view games on cable for as much as \$7.95 per game, and four basketball teams and three hockey teams offered pay-per-view games for as much as \$13.95 for regular season games and \$19.95 for playoffs.<sup>49</sup> The New York City Department of Telecommunications and Energy notes that access to sports programming carried on MSG Network and SportsChannel will cost as much as \$37.95 per month (\$455 per year).<sup>50</sup>

18. Impact of superstations. NBA, NHL and MLB contend that telecasts of games over broadcast stations delivered by satellite, or superstations, can negatively affect concurrent broadcasts of other games by fragmenting the viewing audience and interfering with exclusivity.<sup>51</sup> MLB notes that in 1980, three superstations collectively presented 315 games while in 1993, seven superstations will present a total of 695 games. MLB submits that the most prominent of the current superstations, WTBS, WGN and WWOR, reach 58 million, 38 million and 13 million households, respectively.<sup>52</sup> MLB also argues that the unfair competition to CBS and ESPN posed by superstation sales of national advertising has been a major factor depressing interest on the part of national broadcast and cable networks in televising regular season baseball.<sup>53</sup>

19. Conversely, Turner contends that its superstation telecasts on WTBS do not divert audience from local game broadcasts. Turner asserts that 1991

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<sup>47</sup> Time Warner Comments at 14-28.

<sup>48</sup> INTV Reply at 8; NAB Comments at 3-5.

<sup>49</sup> CBS Reply at 6-7.

<sup>50</sup> NYC Comments at 6. We presume that NYC is referring to the cost of subscribing to basic cable plus SportsChannel plus MSG Network (where it is not included on the basic tier).

<sup>51</sup> NBA Comments, Exhibit 7 (report by Bortz & Company regarding the impact of superstation carriage of NBA games); NHL Comments at 18-19; MLB Comments at 9-15.

<sup>52</sup> MLB Comments at 12-15.

<sup>53</sup> Id. at 9-11.

ratings for home market MLB broadcasts averaged 11.3 when up against a telecast of the same game on WTBS and 11.2 when not duplicated by TBS; games duplicated by WTBS averaged a 0.5 rating in those same local markets.<sup>54</sup> Turner argues that while superstations do compete for advertising dollars with national network baseball, that competition is not substantial. Turner further asserts that superstations do not compete with broadcasters for local advertising dollars, since the compulsory copyright license requires a superstation signal to be carried without modification by the cable operator.<sup>55</sup>

20. In addition, United Video contends that superstation growth has slowed in recent years. It argues that while television coverage of professional sports has increased over the past 10 years, the superstation portion of that coverage has declined -- for example, from 22 percent of MLB games in 1982 to 11 percent in 1992, and from 11 percent of NBA games in 1986 to 4 percent in 1992. United Video further submits that superstations generate \$45 to \$50 million in annual revenue for major league sports from distant signal copyright fees and direct MLB superstation surcharges, and argues that loss of this revenue stream would have to be recouped from other sources, possibly pay or pay-per-view sports services.<sup>56</sup>

#### B. Professional Football

21. In addition to the more general data requested in the Notice, we specifically inquired as to the impact of Sunday night cable telecasts on total viewing of NFL games. We also asked how regional games are distributed and sought comment on future expansion of NFL telecasts. Further, we noted that the NFL sells exclusive telecasting rights for all its teams, unlike the other major professional sports leagues, and we requested comment on this arrangement.<sup>57</sup>

22. The NFL consists of 28 member clubs divided equally into 2 conferences, the NFC and the AFC. Within each conference there are 3 Divisions -- Eastern, Central and Western. Each NFL team plays a 16-game regular season schedule divided equally between home and away games. Prior-

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<sup>54</sup> It would be helpful in subsequent rounds of this proceeding if commenters could submit ratings data applicable when two different games are shown on a local broadcast station and on a superstation at the same time.

<sup>55</sup> Turner Comments at 9-12. We note that superstations do compete with local broadcasters for national spot advertising.

<sup>56</sup> United Video Comments at 7-9. Turner similarly notes that annual compensation received by MLB from the compulsory license copyright pool for distant carriage of baseball exceeds \$20 million and that MLB is also paid approximately \$30 million annually by the individual teams for their baseball games to be televised beyond their respective regions. Turner Comments at 11.

<sup>57</sup> Notice at 1495.



to the 1990 season, 10 teams qualified for the playoffs — the 6 divisional champions as well as the 2 other teams in each conference with the best records (i.e., wild card teams). Beginning in 1990, a third wild card team was added from each conference, expanding the total number of playoff qualifiers to 12 teams. Those teams play in a four-week single elimination tournament, culminating with the two conference champions meeting in the Super Bowl.<sup>58</sup>

23. NFL has contracts with the three broadcast networks and with ESPN and TNT. Each of these contracts was entered into prior to the 1990 season and will expire following the 1993 season. Pursuant to its contract with NFL, NBC receives 3 pre-season games, all non-prime time regular season AFC games, all non-prime time inter-conference games where the visitor is an AFC team, all AFC playoff games (other than the AFC Wild Card game televised by ABC) and one Super Bowl. CBS receives the corresponding package for the NFC. NBC and CBS games are generally broadcast on Sunday afternoons, Thanksgiving Day and Saturday afternoons late in the season. ABC, whose telecasts are shown on Monday nights, receives 4 pre-season games,<sup>17</sup> regular season games (18 in 1993), two playoff games and one Super Bowl.<sup>59</sup>

24. With respect to its cable contracts, NFL notes that from 1980 through 1986, NFL games were shown exclusively on broadcast television. In 1987, the NFL sold eight Sunday night games to ESPN after ABC decided to drop the Thursday and Sunday night games it had previously shown as specials in addition to its Monday night games. In 1990, the NFL further increased the number of games available by restructuring regular season and post-season play and added TNT as a second cable carrier. TNT and ESPN currently share a package of 17 Sunday night games (18 in 1992 and 1993), with TNT carrying the games during the first half of the season and ESPN during the second half. Each cable network also receives the rights to three preseason games. The Pro Bowl, telecast by ESPN, is the only post-season game included in the cable contracts.<sup>60</sup>

25. The rights sold to CBS and NBC are non-exclusive (i.e., the two networks air competing telecasts on Sunday afternoon), while the ABC and cable network rights are exclusive. All games, however, including those telecast by ESPN and TNT, are broadcast over the air in the home market of the visiting team and, if the game is sold out 72 hours in advance, in the home market of the home team.<sup>61</sup> NFL submits that because of the relatively limited number of home games that each NFL team plays, it is important to maximize attendance revenues, and asserts that the guarantee that all of the teams' road games will be brought back to the home market helps to promote

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<sup>58</sup> See NFL Comments at 8-9.

<sup>59</sup> Id. at 10, 16.

<sup>60</sup> Id. at 10-13, 16, 20-21. ESPN notes that NFL games are the highest rated programs carried on ESPN. ESPN Comments at 7.

<sup>61</sup> Id. at 9-10, 13-14, 16.